

**California Department of Transportation
Native American Advisory Committee
Quarterly Meeting Minutes
January 11, 2006**

Chairman Joseph Myers called the meeting to order at 9:05 am.

Blessing: Chairman Myers led the Blessing.

Adopt Agenda: The Native American Advisory Committee (Committee) passed the agenda with no changes or additions.

Approve Minutes: Minutes of the October 5, 2005 meeting were approved. Motion by Garth Sundberg; second by Dave Nenna.

Vote: 14 Yes, 0 Against.

Welcome and Introductions: Chairman Myers welcomed everyone to the meeting.

Roll Call: Committee members in attendance were: Mark Franco, Joseph Garcia, Sr., Ervin Lent, Bo Mazzetti, Joseph Myers, Richard Myers, Dave Nenna, Tom Davis alternate for Jessica Gonzales-Norte, Lorenda Sanchez, Garth Sundberg, Kathy Wallace, Richard Warner, LeLand Watterson, and Charles Wood.

Director's Representatives in attendance were: Joan Sollenberger, Acting Deputy Director, Planning and Modal Programs; Sharon Scherzinger, Office Chief of Regional and Interagency Planning; Cynthia Gomez, Branch Chief, Native American Liaison Branch.

Others in attendance were: Lee V. Bigwater, CA/NV Tribal Technical Assistance Program (TTAP); Mario Orso, Caltrans District 11; Olivia Fonseca, Caltrans Deputy Director, Civil Rights; Karen Governor, Caltrans Civil Rights; Robert Padilla, Caltrans Civil Rights; Kathleen McClafin, Caltrans District 10; Jo Sanford, Caltrans District 8; Jackie Parker, Caltrans District 5; Richard Olsen, Caltrans District 3; Nancy MacKenzie, Caltrans; Kathleen Sartorius, Caltrans North Region; Carolyn Yee, Caltrans District 10; Teri Pencovic, Caltrans; Valarie Smith, Caltrans Native American Liaison; Jila Priebe, Caltrans Native American Liaison; Blesilda Gebreyesus, Caltrans District 4.

OLD BUSINESS

Introduction of New Members: Chairman Myers welcomed the newly elected and re-elected members to the Committee. The newly elected members were: Mark Franco, Winnemem Wintu Tribe; Ervin Lent, Big Pine Paiute Tribe; Bo Mazzetti, Reservation Transportation Authority; Jessica Gonzales-Norte, Agua Caliente Reservation; Richard Warner, Elk Valley Rancheria; Leland Watterson, Bishop Indian Tribal Council; Tobin White, Soboba Band of Luiseno Indians; Charles Wood, Chemehuevi Indian Tribe. The re-elected members were: Dave Nenna, Tule River Tribal Council; Garth Sundberg, Trinidad Rancheria; and Joe Loya, Torres Martinez Reservation.

Election of Vice-Chairperson: Mr. Dave Nenna was elected to the Vice-Chairman position.

Vote was 14 Yes, 0 Against.

Membership/Alternate Information Form: Ms. Valarie Smith requested that the NAAC members fill out the membership and alternate form and return the form to her by the end of the meeting. The forms are necessary for staff to keep updated information for better communication and to verify attendance.

Overview of the Department's Organizational Structure: Cynthia Gomez gave a brief overview of the California Department of Transportation (Department) organizational structure. She stated that the Department has twelve (12) Districts, and most Districts have a Native American Liaison. She also, pointed out that a list of District Native American Liaisons was included in the members' packets.

Follow up: TERO Policy: Ms. Olivia Fonseca, Deputy Director for the Civil Rights Division gave a follow up report on the status of the TERO policy. She mentioned that the Department is considering revising the TERO policy, and for that reason the policy was recanted from the Department's web site for a short time; however, under the direction of the Director the TERO policy is back on the website and it is active. During the last NAAC quarterly meeting the Committee created a TERO Subcommittee to assist the Department with the revision of the policy. The TERO Subcommittee met on November 29, 2005. The Subcommittee came up with twenty-four action items to improve the communication between Tribes and the Department (a copy of the action items was distributed to the Committee members.) She stressed that the Department wants to resolve these issues quickly.

Member Mazzetti, asked, if the Department's intent is to do away with the TERO policy? Ms. Fonseca replied, no, however, our Legal Department is currently looking at the legality of compliance with the TERO policy on State owned Right-of-Way and State funded projects.

Mr. Robert Padilla, Civil Rights, TERO Coordinator mentioned that consultation regarding the revision will be done in accordance with SB 18 guidelines and he will obtain a contact list for all tribes in accordance with the SB 18 guidelines. A letter will be sent out to federally recognized tribes and non-federally recognized tribes notifying them of the Department's request for consultation regarding revisions to the TERO policy.

Ms. Joan Sollenberger, Acting Deputy Director, Planning and Modal Programs, stated that SB 18 guidelines emphasize consultation for the protection of cultural resources, a requirement for cities and counties when they are updating their General Plans. Since TERO is a function of federally recognized tribes, we should use the contact list that the Department has for the federally recognized tribal governments.

Disadvantage Business Enterprise (DBE): Ms. Fonseca also gave an update on the Department's DBE program. She stated that the Department is required by a recent Ninth Circuit Court of Appeals ruling to consider amending its Disadvantaged Business Enterprise (DBE) program goals for all federally funded contracts. The Ninth Circuit Court of Appeals decision, *Western State Paving Co. Inc. v. Washington Department of Transportation*, has established new evidentiary standard necessary to constitutionally support the use of race-conscious DBE goals such as those currently used by the Department. A letter of notice initiating a forty-five day public comment period has been sent out to tribal governments regarding the Department's consideration to amend the DBE program goals. The Department will accept comments and documentary evidence until February 3, 2006. After comments are received during the forty-five day public comment period, the Department will determine whether it is able to continue with any level of race-conscious program.

Planning and Programming (funding) Process: Sharon Scherzinger, Office Chief of Regional and Interagency Planning gave an overview of the State Planning & Programming (Funding) Process. She emphasized how tribes can become involved in the process. She mentioned that all planning processes start with a twenty-year plan, and that the Department is required by both federal and state statutes to develop a comprehensive Long Range Plan. Both Regional Transportation Planning Agencies (RTPA) and Metropolitan Planning Organizations (MPO) have the same requirements. She also, explained the state programming (funding) processes.

Review/Discuss Comments to improve/clarify Director's Policy (DP) 19 "Working with Native American Communities": Ms. Gomez informed the Committee that under the direction of the Director and recommendations of the Committee the Department's government-to-government Policy is currently under revision. The Director's intent is to strengthen the policy for greater accountability and responsibility when the Department is working with tribal governments. The policy was circulated internally to the Department's Districts and Divisions for their review and comments. All comments were incorporated into a draft summary, which is included in each member's packet. After a discussion the Committee decided to form a Subcommittee to review the policy. Chairman Myers, ask the Committee members for volunteers. Member Bo Mazzetti, Mark Franco and Chairman Myers volunteered to serve on the Subcommittee. The Subcommittee will meet in Sacramento on January 17, 2006 to review and make further recommendations to strengthen the policy and submit their recommendations to the Committee during the next NAAC quarterly meeting.

Indian Roads Reservation (IRR) Program Coordinating Committee Report: Member Mazzetti gave a report on the IRR Coordinating Committee. He mentioned that the Coordinating Committee had met several times in the past few months. One of the issues they are working on is the BIA's new requirements for the IRR program mandating tribes to have a long range transportation plan, average daily traffic counts (ADT), and a Memorandum of Understanding (MOU) with counties, cities and/or the State. He mentioned that recently, the BIA rejected many of the small tribes' transportation plans, because they did not meet the BIA's new requirements. The

Coordinating Committee feels that at this time the BIA's requirements are very unclear and cumbersome, therefore, the Committee's consensus was to recommend that if a tribe's transportation plan consists of a one page cover sheet, one page identifying the roads, and an authorization letter from the tribe (not necessary a resolution), the BIA should accept the information as a transportation plan. Mr. Mazzetti stated that he would bring more information regarding the recommended requirements to the next NAAC quarterly meeting along with a sample of the minimum requirements for the smaller tribes.

Legislative Subcommittee: Ms. Gomez pointed out to the Committee that their packets included information regarding new and upcoming legislative information.

Highway Landscaping Subcommittee Report: Member Wallace announced that the Subcommittee met last month and they were still getting photos of baskets and other pictures to finalize the landscaping guidebook.

Chairman Myers stated that he would like to invite Reina Rogers from the Regional Office, Natural Resource Center (NRC) to make a presentation. Chairman Myers requested the NALB to send the invitation on behalf of the Committee.

NEW BUSINESS

Schedule NAAC Quarterly Meetings: The Committee decided on the following dates for the 2006 meetings to be held at the Woodland Training Center from 9am to 3pm.

- April 5, 2006
- July 12, 2006
- October 11, 2006

Presentation on Safety Project: On behalf of Kelly Myers, National Indian Justice Center (NIJC) Ms Gomez gave a progress report on the Safety Outreach and Education Program grant. The project will target six state highways that are on or near Native American reservations. She stated that the NIJC would provide status reports and program effectiveness data at the NAAC quarterly meetings in coordination with the NALB.

SAFETEA-LU: Transit Eligibility Requirements: Ms Gomez informed the Committee that information regarding SAFETEA-LU: Transit Eligibility Requirements was in their packet. She mentioned that the Federal Transit Administration (FTA) was still soliciting comments prior to the development of the final FTA implementation policy and guidelines for the program. The transit grant program had appropriated eight million dollars for fiscal year 2006. If any Committee member wanted further information they could call the NALB office.

Adjournment

The meeting was adjourned at 2:55 p.m.